

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **October 11, 2006**

Time: 8:30am

Place: **Room 4112, State Office Bldg**

Members

Commission Members

xChairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*

xDavid M. Lattin, *Salt Lake*

xGlen W. Roberts, *Utah*

xR. Curt Webb, *Cache*

Department Staff

xJohn E. "Mickey" Braun, Jr.
Ass't Commissioner

xPerri Babalis
AG Legal Counsel

Darrel Powell
Dir. Market Conduct

xMark Kleinfield
Admin. Law Judge

xGerri Jones
MC Examiner

xSheila Curtis
MC Examiner

Brad Tibbitts
Dir. Life & P&C

xJilene Whitby
PIO/Recorder

Visitors

Jack Marinello
Joe Corbin

Larry Blake
James Seaman

Joseph McPhie

AGENDA

- I. **Welcome and Introductions by Darwin L. Johnson, Chair**
Darwin welcomed everyone and began the meeting at 8:33 a.m.
- II. **Adoption of Minutes of Previous Meeting**
Minutes of the September meeting were adopted without change.
- III. **Review & Concur with Licensee Report**
The Commission was provided licensing reports for July, August and September. Curt moved to accept them and Glen seconded the **motion**. The vote was unanimous in favor of the motion.
- IV. **Review & Concur with Enforcement Case Report / Mark Kleinfield**
Mark described two enforcement cases the department had been working on since the last meeting. Both dealt with revocations.
 - **Erin Brooke Smith:** The department filed a complaint against Erin August 29 for allegations that while employed by Equity Title she authorized the transfer of funds from a fiduciary account to her own account. A pre-hearing was held October 4. She did not appear. The department recommended revocation of her license. The Fraud Division has reviewed this case. Joyce made a **motion** to approve the department's recommendation; Glen seconded it and the vote unanimous in its favor.
 - **Scott Christopher Carlston:** A complaint was filed by the department September 5, 2006 and a pre-hearing was held October 10. A stipulation was entered into and Mr. Carlston agreed to have his license revoked. On November 23, 2005 he was convicted of four second-degree felonies, three of which were communication fraud and one theft by deception. The department recommended Mr. Carlston's license be revoked for flaws in character. Currently Mr. Carlston is incarcerated. Curt made the **motion** to concur with the recommendation; Joyce seconded it and the vote was unanimous in its favor.
- V. **Old Business**
 - **Number of Cases Open & Closed / Mickey**
Report pending

- **Discuss Changes to R592-2 / Mickey**

Mickey provided the Commission with a copy of Rule R592-2 with changes marked. Darwin asked when the rule would go into effect. Mickey said it would be enforced 45 days after the rule goes into effect at the end of the comment period. Joyce made the **motion** to accept R592-2 as changed; Glen seconded the motion and the vote was unanimous in its favor. Curt noted that Roberts Rules requires discussion after a motion is seconded.

- **Report from Liaison Meeting / Curt**

The Liaison committee wanted to know the Commission's stand on flips and the status on proposed Rule R592-5. They have submitted suggested changes to this proposed rule along with their justifications for the changes. The Liaison Committee felt the Code was not clear on the funding of flips. Curt is in favor of a disclosure on flips. Some at the liaison meeting felt flips should be eliminated and others did not. Gerri just sees the improper use of flips and would like to get rid of them. Gerri would like to see legitimate uses of flips. Joyce asked if a rule needed to be issued on flips. Gerri said the Division of Real Estate would have to make rules regarding their forms dealing with flips. Glen noted there needed to be a standard way of handling these types of transactions. Curt said that the Liaison Committee was glad to have Sheila in attendance representing the Department.

VI. **New Business**

- **Trustee acting for the developer / Glen**

Glen noted that the issue is title companies acting as trustee or a holding entity for developers, typically in conveying title for them. The question is, "Is this an appropriate activity? Is it an unlawful inducement?" This came up in the ULTA meeting and they asked Glen to bring it to the Commission to get their view.

- This is an old practice. Darwin and Curt had seen it done in the past. Curt asked attendees if they were seeing it. Joseph McPhie said he had been asked to act as trustee on airport hangers.
- He also noted that a city had asked him to act as a trustee of property. There was a trust agreement, release agreement, etc., in place. He took a deed to be sure conditions of trust were met and when the job was completed, he released the deed back to the city.
- Curt asked what happens if you have a title company that's in trouble? What does it do to the property? McPhie noted one did not take title but acted as a trustee and there were instructions as to what their duties were.
- Joyce asked if we were in violation of the rule that says we can't disperse upon completion? McPhie said that both parties have to sign off on it.
- Darwin asked what the benefit was to them? McPhie said it was to act as a facilitator. Title companies know more about easements and making legal descriptions of land.
- Curt thought it was like a completion escrow. He and Joyce thought it was a form of controlled business. They would need to examine what the activities were and their results. Curt suggested tabling the discussion until the next meeting, at which time it could be included with the other priorities and be numbered. Glen **moved** to table discussion for next meeting; Joyce seconded the motion and the vote was unanimous.

- **Review of ULTA's wording changes on R592-5 and hearing procedures**

- Glen suggested they review ULTA's proposed wording changes for R592-5.
- Curt asked how the hearing would go. Mickey said Mark would introduce the format for the hearing. He will allow comments for about an hour. Once they become repetitive he may limit or cut it off at that point. He is here to control the hearing. At the beginning he will ask a member of the Commission to tell those present why the rule was created. If changes are made to the rule that are substantive then an

additional comment period will be needed. An additional hearing should not be necessary. Mark may allow those giving comment to ask questions of the Commission if he feels it is appropriate. Perri noted that the Commission has the right to allow speakers to give full comments. They can set the direction of the hearing. Mark is administering the hearing for them.

- Glen thought Paul had done a good job with the changes to R592-5. He noted that Subsection 4(10) was new. It clarifies the fact that the rule deals with escrow duties and not with those that issue title policies. "It" needs to be clarified. Change "It" to "agent." Our discussion has been that there should be one escrow agent.
- Joyce noted that many have expressed concern to her that the rule does not stipulate that there can be two title companies issuing policies and two companies doing the closing but there is only one fiduciary. Paul's draft somewhat covers it. Glen noted that the rule states there is to be no more than one escrow agent in a transaction. He must be designated by written agreement executed by both parties. Ambiguity may be in (4)(b).
- Jack was concerned about how the words "close" and "settlement" were being used. Glen said the rule uses the term "escrow" instead of "closing" and "settlement." Gerri noted that the definition of "escrow" includes the word settlement.
- We don't want to preclude someone from doing mail-outs.
- Jack said it was not the intent of the rule to prohibit a principal in the action to be able to select who would issue title insurance. The fact that the escrow agent issues a policy is clear. You're not prohibiting more than one title company from issuing a title policy.
- Joe Corbin said there would be a fight between the buyer and seller's agents as to who appoints the escrow agent. Who will referee it? The rule is written to take freedom away from people buying and selling their house. Curt noted that this is not in the rule now. It is what ULTA wants to add. He noted that the rule specifies that one escrow agent has to issue a policy but is silent as to whether there are other title companies. He did not feel the rule should specify everything that could or could not be done.
- Gerri asked when the next ULTA Liaison meeting would be held. Sheila thought it was in January.
- Glen suggested discussing the bulletin at next month's meeting and R592-5 after the hearing today.
- Joyce asked if Nevada had something in their REPC that says the buyer selects? Joseph McPhie indicated there was no state form in Nevada. Jack said that California's standard state form has lines where principals in a transaction decide in writing who will provide settlement services. It shows who will be the fiduciary agent and how settlement services will be paid for; who the title insurance companies are and who pays for title insurance. There are no contentious arguments about who these will be. Agents need to get away from idea of MY escrow agent. They should be neutral.

VII. Break for Rule Hearing R592-5

At 10 a.m. Curt made the **motion** to recess until time for the hearing at 11 a.m. David seconded it and the vote was unanimous in its favor.

VIII. Other Business from Committee Members

IX. At 12:34 p.m. the Commission reconvened.

- Glen felt there was ambiguity as to whether or not a second title company could issue a title policy. He suggested adding clarifying language in R592-5-4(4)(b) "This rule does not prohibit a policy to be issued by non-designated escrow agent." Maybe it should be "title company." David agreed.

- Curt noted that he had not been in favor of the creation of this rule. He did not believe there was evidence for doing it at all. Administrative actions are against bad players, not split closings. He felt splits needed to be fixed, not eliminated.
- Glen said consumers think we are a neutral party. We are not when we have a split closing because we are an agent to the buyer or seller. It is obscure as to who is responsible for the transaction. By passing this rule we clarify there is one fiduciary and that the fiduciary is responsible to see that the escrow transaction closes appropriately. Joyce said that this is not clear enough. Glen said the only ambiguity is whether someone else can issue a policy. Curt said that the more detail we put into the rule the more argument it will create. He thought a single fiduciary was idealistic and not the best way to go. It works as it is.
- Glen made a **motion** to accept Paul Newton's modifications except Subsection R592-5-4(10) and a sentence should be added to the end of (4)(b) that says; "Additional policies may be issued by other title insurance providers as requested by parties to the escrow." (Added language provided by Larry). David seconded motion. The vote was unanimous in its favor.
- Mickey offered to have the department draft the changes. They will then be sent out to the Commission for their approval.
- Curt made a **motion** to adjourn and David seconded it.

IX. **Reminder:** Next Liaison Meeting in January

X. **Adjourned** at 1p.m.

XI. **Next Meeting** November 8, 2006, 8:30 a.m., Room 4112

Next Meetings

8:00 a.m.

~~January 11, 2006~~

~~February 8, 2006~~

~~March 2, 2006~~

~~April 12, 2006~~

~~May 10, 2006~~

~~June 14, 2006~~

~~July 12, 2006~~

~~August 16, 2006~~

~~September 13, 2006~~

~~October 11, 2006~~

November 8, 2006

December 13, 2006